



BOARD OF BEHAVIORAL SCIENCES
1625 North Market Blvd., Suite S200, Sacramento, CA 95834
Telephone (916) 574-7830
TDD (916) 322-1700
Website Address: <http://www.bbs.ca.gov>



Meeting Minutes
Consumer Protection Committee
April 17, 2006

Radisson Hotel
6225 W. Century Boulevard
Los Angeles, CA 90045

I. Introductions

The meeting was called to order at 9:00 a.m., Mona Maggio called roll and a quorum was established.

Committee Members Present:

Howard Stein, Chair
Robert Gerst
Judy Johnson

Staff present:

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
George Ritter, Legal Counsel

II. Review and Approve January 17, 2006 Consumer Protection Committee Meeting Minutes

Howard Stein moved and Robert Gerst seconded, for the Committee to accept the minutes of the January 17, 2006 Committee Meeting. The Committee approved the motion.

III. Strategic Plan Goal #3 – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes - Report on Progress

The Committee discussed the following objectives:

- A. Objective 3.1 -- Complete Draft Revisions for Continuing Education Laws by December 31, 2006.

Robert Gerst questioned if the target date for this strategic plan objective was achievable. Paul Riches responded that the objective was for Board completion not enactment.

- B. Objective 3.6 – Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010.

Mr. Stein queried the progress of the Division of Investigation's (DOI) recruitment of investigators. Mona Maggio reported that she met with Bill Holland, Deputy Chief of DOI in early April to discuss investigator caseload and processing times. Mr. Holland reported that four new investigators would be on board by mid April 2006; however, four investigators are leaving due to retirement. Mr. Holland suggested the Board consider utilizing subject matter experts (SMEs) to assist staff in the complaint handling process. Many health care boards

are using staff to obtain documents to support the complaint and SMEs for the report writing. These boards are using DOI for criminal cases; when documents must be retrieved via subpoena; and for interviewing witnesses.

Judy Johnson asked what the requirements are to serve as a SME for the Board. Mr. Riches provided a synopsis of the criteria used for selecting SMEs. He added that staff is currently developing a training program for SMEs. The training will be held in the Fall 2006. Ms. Johnson asked that the SME selection criteria be included for review at a future meeting.

C. Objective 3.7 – Complete Annual Review of Examination Program and Report the Results at a Public Meeting

Mr. Stein queried the frequency and number of exam complaints. Mr. Riches responded that the Board receives a small number of complaints and most are regarding the exam vendor or testing environment not the Board.

Mr. Stein thanked staff for the thorough report.

IV. Discuss the Definition of What Constitutes Online Continuing Education

Mr. Riches stated that Title 16, California Code of Regulations (CCR) Sections 1887.3 and 1887.2 require MFTs and LCSWs to complete 36 hours of Continuing Education (CE) to renew their license, and 18 hours for a first-time renewal. The Board's current policy permits licensees to meet the CE requirement in three different ways:

Conventional – defined as a course, convention, or seminar where physical attendance is required.

Self-study (home-study) –defined in California Code of Regulations (CCR) Section 1887(b). A "self-study course" means a form of systematic learning performed at a licensee's residence, office, or other private location including, but not limited to, listening to audiotapes or participating in self-assessment testing (open-book tests that are completed by the [licensee], submitted to the provider, graded, and returned to the [licensee] with correct answers and an explanation of why the answer chosen by the provider was the correct answer. (Amended February 1, 2003)

Online – defined as a course taken on a computer, or any home study course where a participant can fax or email his or her post test back to the provider.

Though licensees are permitted to take an unlimited amount of continuing education by conventional or online means they are limited to obtaining only one-third of the total CE hours required by "self-study". The Board defines the difference between "self-study" and "electronic" CE courses as the method by which the post-test is given. If the post-test is submitted to the provider electronically, including submission by fax, the Board considers that the licensee has completed CE online.

Mr. Gerst stated that the conventional method does not include a post test. Licensees register for class and are given credit, how do we measure what was learned?

Mr. Janlee Wong, representing the National Association of Social Workers (NASW) advocated for the Board to open continuing education policies and not specify the means of learning. The Board should not limit how people learn.

Mary Riemersma, representing the California Association of Marriage and Family Therapists (CAMFT) thinks the Board's current "policy" is at odds with existing regulation and intent of

online continuing education. Ms. Riemersma believes ultimately it should be the decision of the individual of how to obtain the CE.

It was the consensus that the Board should consider expanding CCR Section 1887(b) to include all acceptable methods for obtaining continuing education and not limit the CE credits that can be obtained by any one method - any delivery mechanism in any quantity.

The Committee directed staff to bring back a proposal amending CCR section 1887(b) as discussed.

V. Update on Supervision Survey for Marriage and Family Therapists Interns (IMF) and Associate Clinical Social Workers (ASW)

Mr. Riches reported as of February 27, 2006 - 687 IMF surveys were mailed, and 304 received with a response rate of 44% and for ASW 615 surveys were mailed, and 226 received with a response rate of 37%. Overall, candidates rate their supervision experience and quality of supervision as good, therefore there is no action to recommend.

VI. Discussion and Possible Action on Proposal to Allow Supervision of MFT Interns and ASW Registrants Via Video Conferencing

Ms. Maggio stated that the Committee considered this issue at its January 2006 meeting and directed staff to bring back a specific proposal for limited use of video conferencing for remote locations, and specialty access for ASWs and IMFs.

Staff prepared some initial draft language for the Committee's review and consideration which would permit an IMF or ASW to obtain up to maximum of 12 hours of direct supervision via videoconferencing, when a hardship exists in obtaining supervision at the setting. The supervisor would be required to certify that a hardship existed, and the applicant would retain that certification for submission with his or her licensure application.

Draft Language:

MFT

(a) An intern working in a governmental entity, a school, college or university, or an institution both nonprofit and charitable may obtain up to 12 hours of the required weekly direct supervisor contact via two-way, real time videoconferencing when a demonstrated hardship exists in obtaining supervision at the setting when required.

(b) The supervisor must provide the intern with a signed letter of self-certification which demonstrates that such circumstances existed. The intern shall provide this letter to the Board with his or her application for licensure.

LCSW:

(a) An associate clinical social worker working in a governmental entity, a school, college or university, or an institution both nonprofit and charitable may obtain up to 12 hours of the required weekly direct supervisor contact via two-way, real time videoconferencing when a demonstrated hardship exists in obtaining supervision at the setting when required.

(b) The supervisor must provide the associate with a signed letter of self-certification which demonstrates that such circumstances existed. The associate shall provide this letter to the Board with his or her application for licensure.

Ms. Riemersma inquired as to how staff arrived at 12 hours when at the January 2006 meeting it was discussed that 10% of the weekly supervision could be obtained by video conferencing. Ten percent would be 30 hours.

Mr. Riches responded that the licensing evaluators need to be able to evaluate units/hours and staff came up with 12 hours.

Mr. Wong agreed that if the purpose of video conferencing is to assist candidates working in a rural setting then 10% is a very small amount hours for credit. Why not 50%? Participants in distance learning programs can earn up to 75% of credit but must have 25% by face to face.

Mr. Gerst questioned whether we have established the professionalism of the practice of video supervision. He also raised the question of why limit this method of supervision just for those in rural settings.

Mr. Wong expressed his concerns of ensuring the client's privacy and ensuring a secure connection.

Carla Cross, Art Therapist stated she supervises art therapist trainees by video conferencing and has not encountered any problems.

Judy Johnson added that we need to embrace technology but take it slow, develop guidelines and research the issues of privacy and security to protect the client.

Ms. Riemersma stated that the employer should be responsible for ensuring privacy and security even in off-site settings.

Mr. Gerst restated the need to assure confidentiality.

It was the consensus of the Committee and audience participants to eliminate the hardship requirement from the proposed draft language.

Mr. Riches inquired if we should consider a formal pilot project in concert with third party to oversee project and produce study result. The Committee directed staff to conduct further research and report back at a future meeting.

VII. Review and Discuss the Scope of Unprofessional Conduct Statutes and Regulations

Ms. Maggio stated that at the January 2006 meeting the Committee discussed the Board's complaint handling process and the various violations defined as unprofessional conduct in Business and Professions Code (BPC) Section 4982, (Marriage and Family Therapists [MFT]); BPC section 4998.1 (Licensed Clinical Social Worker [LCSW]); and BPC section 4986.70, (Licensed Educational Psychologist [LEP]). Additionally, Mr. Wong and Ms. Riemersma advised the Committee of the internal processes used by the associations when a complaint is filed against one of its members.

For the purpose of further discussion and possible consideration for expanding the definition of unprofessional conduct staff provided a comparison of the Board's unprofessional conduct statutes, a copy of NASW's and CAMFT's Rules of Professional Conduct and reoccurring complaints where the Board does not have jurisdiction to take action.

Ms. Maggio reported that the Board receives numerous complaints regarding licensees who decline to provide client records pursuant to Health and Safety Code section 123110. Although the Enforcement Analysts contact the licensees in an attempt to assist clients in obtaining treatment records, we have no recourse for noncompliance because the Board does not have a provision in law to require licensees to provide the records. If the Enforcement Analyst is unable to mediate the situation, then complainants are referred to the court or their legal counsel for possible assistance. This results in extensive costs for the clients.

Mr. Gerst queried whether there are there elements in the codes of ethics that should be

incorporated in Board's laws as unprofessional conduct.

Ms. Riemersma cited major differences in defining unacceptable dual relationships and establishing best practices.

Mr. Wong stated that the range of practice of social work is too broad to codify codes of ethics.

Ms. Riemersma stated that in expanding the definition of unprofessional conduct to include a violation of Health and Safety Code section 123110, the Board should preserve the discretion of the therapist to provide a summary or to decline to provide if determined to be not in the interests of the patient.

The Committee recommended that the Board sponsor legislation to add violations of Health and Safety Code Section 123110, which requires healthcare providers to provide patient records upon request, to the definition of unprofessional conduct Business and Professions Code sections 4982 (MFT), 4986.70 (LEP) and 4992.3 (LCSW).

VIII. Review Enforcement Program

The Committee reviewed the statistical information provided by the Enforcement Unit.

Mr. Gerst requested that cost recovery data be broken down to exclude costs for surrender and revocation cases where it is unlikely the Board will recover costs.

IX. Review Enforcement Authority Available to the Board for Urgent/Emergent Cases

Ms. Maggio noted that in fiscal years 2000/01 through 2003/04 it took an average of 209 days from the date formal charges were filed (Accusation) to reach final disposition of a disciplinary action. However, complaints alleging psychological or physical impairment require immediate action, as do high profile arrests. In cases in which the licensee poses significant harm to self or others and necessitates a more timely suspension of the license, the Board's Enforcement Unit has utilized two resources, Interim Suspension Orders (ISO) and Penal Code Section 23 Orders (PC 23).

Ms. Maggio stated that Interim Suspension Orders have been used in those cases in which the licensee is subject to discipline pursuant to sections 820 and 822 of the Business and Professions Code, by reason of a physical and/or mental illness affecting the licensee's competency to practice. In the past five fiscal years the Board has issued Interim Suspension Orders in two cases. The respondents in both cases voluntarily surrendered their licenses.

Ms. Maggio stated that a PC 23 is used in those cases in which the licensee has been arrested for an egregious crime substantially related to the license and in the interest of justice and protection of the public the licensee or registrant must be immediately prohibited from practicing. PC 23 orders have been issued in seven cases in the last five fiscal years. The charges or convictions included lewd and lascivious acts upon four minor boys, voluntary manslaughter, stalking, and sexual battery by restraint. Two cases are currently pending, an associate clinical social worker convicted of a lewd act upon a child, and a marriage and family therapist convicted of 51 felony charges including committing lewd acts upon a child, aggravated sexual assault of a child and posing a minor for pictures involving sexual conduct. The closed cases resulted in revocation.

Ms. Maggio reported that the Enforcement Unit has not had an occasion to seek a temporary restraining order (TRO) injunction; however, if a case presents itself where a TRO is necessary, the Board would seek this procedural device.

X. Discuss Agenda Topics for Future Committee Meetings

There were no suggestions for future agenda items.

The meeting adjourned at 11:30 a.m.